IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.141 OF 2005

Neelkanth Ganpat Shetgiri & Anr. ...Applicants

Versus

State of Maharashtra ...Respondent

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Mr.Chaurasia i/b Mr.A.M.Saraogi for Applicants.

Mr.V.B.Konde-Deshmukh, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

NOVEMBER 25, 2005.

P.C.

1. Heard Counsel for the parties.

2. According to the Applicants, assuming that the Applicants were to be proceeded against in respect of the alleged publication, by no stretch of imagination, offence punishable under Sections 465, 468 and 471 of Indian Penal Code can be invoked in the fact situation of the present case. Insofar as Section 292 read with Section 34 of the

Indian Penal Code and Sections 3, 4, 6 and 7 of Indecent Representation of Women (Prohibition) Act, 1986 is concerned, it is unnecessary to burden this order, as no serious argument was canvassed.

3. Insofar as application of Sections 465, 468 and 471 of the Indian Penal Code is concerned, I find substance in the argument canvassed on behalf of the Applicants that there is no tittle of evidence to indicate that the Applicants were responsible for making the false documents which were displayed on the internet in the first place. Whereas, even accepting the prosecution case as it is, it appears that the Applicants have downloaded the said document from the internet, which has been published in the magazine, for which, the Applicants cannot be tried for forgery and related offences under Section 465, 468 and 471 of the Indian Penal Code. Instead of recording any final opinion in this behalf, I am of the view that the appropriate course for the Applicants would be to approach the Trial Court by way of application for discharge in relation to the said offence and if such application is filed, the Trial Court may

decide the same before proceeding with the trial any further.

4. Accordingly, this Application is disposed of with liberty to the Applicants to take recourse to remedy of discharge, as the entire record is before the Trial Court which has been submitted along with the charge-sheet filed by the investigating agency.

5. Application is disposed of on the above terms, leaving all questions on merits with regard to application of Sections 465, 468 and 471 of the Indian Penal Code open, to be considered at the appropriate stage.

6. In view of the disposal of this Application, interim relief is also vacated with liberty to the Applicants to appear before the concerned Court and seek appropriate directions as may be advised.

A.M.KHANWILKAR, J.